IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.944 OF 2005

Mahavir Kallu Kavatage .. .. ..Appellant
Versus
1.Bapu Bhau Kavatage (dead)
thrugh his legal representaives
A.Chandrabai Bapu Kavatage & ors.. ..Respondents

Mr.V.B.Rajure for appellant

CORAM : P.V.KAKADE, J.

DATE : 1ST SEPTEMBER, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Kolhapur dated 29.10.2004 dismissing the appeal and confirming the judgment and order passed by Joint Civil Judge, Junior Division, Kolhapur dated 28.8.2001 decreeing the suit and dismissing the Counter Claim of Defendant no.2 with direction that the defendant no.2 to give 1/3rd share in the suit property to the plaintiffs within one month.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff filed the suit for partition and separate possession of the suit property against the defendants. The defendants contested the suit, inter alia, filing counter claim on various grounds seeking dismissal of the suit.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs had proved that the suit property was ancestral property of one Bapu Kawatage and defendant no.1. It was further proved that the plaintiff was entitled 1/3rd share therein. The defendant no.2 proved that the original owner of suit properties was one Dada Kapse and he was given suit properties to Kaloo Bhau Kawatage i.e. the defendant no.2 by virtue of Will dated 16.10.1930 and as such the suit came to be decreed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties concurred with the findings recorded by the trial court and dismissed the appeal. Hence the present appeal.

4. The only question involved in this dispute was regarding proof of alleged Will dated 16.10.1930

executed by one Dada Kapse in favour of Kaloo Kawa i.e. defendant no.2. However, the perusal of the judgments of both the courts show that both the courts have concurrently found that the Will is not proved and as such defendant no.2 has not established his plea in that regard. Consequently the property was held to be ancestral property wherein the plaintiff was found 1/3rd share therein. There is no substantial question of law involved in this appeal and the factual aspects to the evidence are seen to be properly appreciated by both courts below. Under these circumstances, no interference is called for and second appeal stands dismissed. Consequently Civil application No.1473 of 2005 also stands dismissed.